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NOT TO BE PUBLISHED

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

THE PEOPLE, Plaintiff and Respondent, v. HARI PRASAD, Defendant and Appellant.	C069475 (Super. Ct. No. 08F07417)

During an argument with his wife, defendant Hari Prasad threw household objects at her and kicked her. Defendant's daughter was also injured during the altercation. A jury found defendant guilty of corporal injury resulting in a traumatic condition and endangering the life or health of a child. The court placed defendant on five years' probation on the condition he serve 365 days in jail and have no contact with "the victim or the victim's family." Defendant challenges the no-contact provision of his probation, arguing it unconstitutionally delegates judicial power to an executive officer and is vague because it lacks a knowledge requirement. We shall affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

In the summer of 2008 defendant argued with his wife. During the quarrel, defendant began throwing household objects while his wife and two-year-old daughter looked on. Defendant threw a plastic shelf at his daughter. His wife blocked the shelf, which hit her in the nose, causing a laceration.

Defendant's wife left the apartment with their daughter, taking her to a family member next door. After dropping off their daughter, defendant's wife attempted to walk downstairs; defendant grabbed her and threatened to throw her down the stairs. When she sat down, defendant kicked his wife in the knee, causing an abrasion.

Following the incident, family members took defendant's daughter to a hospital because she could not stand up. Her femur was broken, apparently during the confrontation between her parents.

An information charged defendant with corporal injury resulting in a traumatic condition upon his spouse and endangering the life or health of a child under circumstances likely to produce great bodily harm or death. (Pen. Code, §§ 273.5, subd. (a), 273a, subd. (a).) The complaint also alleged, under the second count, that defendant personally inflicted great bodily injury upon the child. Defendant entered a plea of not guilty.

A jury trial followed. The jury found defendant guilty of both charges, but found the great bodily injury allegation not true.

The court suspended imposition of sentence and placed defendant on five years' probation on the condition that he serve 365 days in the county jail and "have no contact whatsoever with the victim or the victim's family without prior permission of the probation officer." Defendant filed a timely notice of appeal.

DISCUSSION

I.

The People argue that defendant's failure to challenge the probation condition in the trial court has resulted in forfeiture of the issue; a challenge cannot be raised for the first time on appeal.

Cognizant of the principle, cited by defendant, that the forfeiture rule does not apply to constitutional challenges that present pure questions of law (*In re Sheena K.* (2007) 40 Cal.4th 875, 888-889 (*Sheena K.*), the People insist that the issue presented here is not a pure question of law. According to the People, reference to the trial record is necessary. Absent a review of the sentencing record, we would be unaware that the condition exempts defendant's parents and resulted from his assault on his wife. We are not persuaded.

As noted, a challenge to the constitutionality of a probation condition may be raised for the first time on appeal if it involves a pure question of law. (*Sheena K.*, *supra*, 40 Cal.4th at pp. 888-889.) "[A] challenge to a term of probation on the ground of unconstitutional vagueness or overbreadth that is capable of correction without reference to the particular sentencing record developed in the trial court *can* be said to present a pure question of law." (*Id.* at p. 887.)

Despite the People's assertion to the contrary, we find the challenge implicates only matters of law. Defendant questions whether the authority to regulate contact with his wife and child can be delegated to a probation officer, and argues the no contact probation condition is unconstitutionally vague. Our analysis does not depend on the factual findings the People cite.

II.

In challenging the delegation, defendant notes the California Constitution does not permit an executive officer to exercise judicial power. (Cal. Const., art. III, § 3.) Regulation of visitation between parents and children is a judicial function. (*In re*

Shawna M. (1993) 19 Cal.App.4th 1686, 1690 (*Shawna M.*).) Therefore, defendant reasons, a probation condition delegating such authority to a probation officer runs afoul of this constitutional prohibition. To remedy this violation, defendant suggests the probation condition be modified to state: "Defendant shall have no contact whatsoever with the victim or the victim's family without prior permission of the court."

A court has the power to create, modify, and terminate no-contact orders. (Pen. Code, §§ 136.2; Fam. Code, § 6320.) A probation department can perform quasi-judicial powers if the exercise of such a power is subordinate to the power otherwise exercised by the court, and the court retains ultimate control over its exercise. (*In re Danielle W.* (1989) 207 Cal.App.3d 1227, 1236 (*Danielle W.*).)

The court is empowered to prohibit defendant from having any contact with his wife and child. Nothing in the court's order in this case allows the probation officer to modify or terminate the court's order. Rather, the probation officer serves as an arm of the court in executing the order. The court retains ultimate control over its order; the probation officer merely carries out a quasi-judicial power.

Sole discretion in visitation decisions in child custody cases cannot be delegated to social workers or the department of children's services (DCS). In *Shawna M.*, the appellate court invalidated a visitation order that vested a social worker sole discretion to determine whether a mother could visit her child, a ward of the court. (*Shawna M., supra*, 19 Cal.App.4th at pp. 1688-1691.) In *Danielle W.*, the court upheld a visitation order that determined visitation between a mother and her children, who were wards of the court, would be in the discretion of the DCS and the children. (*Danielle W., supra*, 207 Cal.App.3d at pp. 1231-1237.) However, the court also held a visitation order granting the DCS complete discretion to determine visitation would be invalid. (*Id.* at p. 1237.)

However, in custody and dependency cases where parental rights have not been terminated, the court is charged with preserving and strengthening the child's family ties

whenever possible and reunifying the minor with his or her family. (Welf. & Inst. Code, § 202, subd. (a).) Minors under the jurisdiction of the juvenile court who are in need of protective services "shall receive care, treatment, and guidance consistent with their best interest and the best interest of the public." (Welf. & Inst. Code, § 202, subd. (b).)

Here, we consider a condition affecting the terms of probation in a criminal case involving serious physical abuse of family members. The court is not charged with attempting reunification or insuring the best interests of the child or family. None of the parties in the present case is a ward of the court. The policy considerations present in *Shawna M.* and *Danielle W.* are not the same as in this case.

III.

Defendant also argues the probation condition is unconstitutionally vague for failing to include an "express knowledge requirement." According to defendant, the condition should be modified to state: "Defendant shall not knowingly have any contact whatsoever with the victim or the victim's family without prior permission of the court."

A probation condition must be sufficiently precise to inform the probation officer what is required of the defendant and for the court to determine whether the condition has been violated. A condition that does not satisfy these requirements is unconstitutionally vague. (*People v. Reinertson* (1986) 178 Cal.App.3d 320, 324-325.)

However, in *People v. Patel* (2011) 196 Cal.App.4th 956, we noted the repetitive nature of this appellate issue: "Since at least 1993, appellate courts have issued opinions consistently holding that conditions of probation must include scienter requirements to prevent the conditions from being overbroad." (*Id*. at p. 960.) Accordingly, we gave notice of our intent to no longer entertain this issue on appeal, concluding, "We construe every probation condition proscribing a probationer's presence, possession, association, or similar action to require the action be undertaken knowingly. It will no longer be necessary to seek a modification of a probation order that fails to expressly include such a scienter requirement. (*Id*. at pp. 960-961.)

DISPOSITION

The judgment is affirmed.

RAYE, P. J.

We concur:

BUTZ, J.

MAURO, J.